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KENYON & KENYON LLP			SEVER, ANDREW T	
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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/088,727
Filing Date: July 19, 2002
Appellant(s): KNOLL ET AL.

Richard L. Mayer
For Appellant

SUPPLEMENTAL EXAMINER'S ANSWER

This is in response to the appeal brief reply filed 9/29/2005 appealing from the Office action
mailed 8/5/2004.

(1) Response to Argument

I. Rejection of claims 16-26 and 31-42 under 35 U.S.C § 103(a) in view of Jost et al. and in view of Kleinschmidt.

Appellant argues that the references relied upon does not disclose or suggest the projection of a real image. Specifically, appellant argues that Jost produces a virtual image on the windshield via a mirror. Appellant further argue that a mirror surface, as taught by Jost, is not suitable for generating a real image. Appellant asserts that nothing in the Kleinschmidt reference suggests the projection of a real image as claimed. Finally, appellant argue that the examiner's rejection is based on conclusory hindsight, reconstruction and speculation [brief, pages 9-13].

The examiner agrees that Jost does not teach generating a real image on a display surface; it only teaches a virtual image. However, this is an erroneous argument as the rejection is not under 35 U.S.C. § 102, but rather under 35 U.S.C. § 103(a) in view of Kleinschmidt.

As outlined in the final rejection and in the examiner's answer, Jost teaches all the claimed limitations except for "a display surface onto which a real image is generated by the projection unit".

However, Kleinschmidt teaches in Figure 23 the generation of both a virtual image on a display and a real image on a display. Kleinschmidt teaches the combination of both virtual and real image displays so that the driver can decide on which display he

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wishes to see the information (column 15, lines 5-11). Kleinschmidt teaches a virtual image projected into the windshield that, when viewed, no longer requires the eyes to be averted from the traffic situation (column 14, lines 36-39). Kleinschmidt also teaches that when it is raining, then the view onto the traffic situation with the virtual image display is greatly impeded, particularly at night; in this case, the real image is available (column 15, lines 47-53). Since Kleinschmidt teaches that displaying a real image in addition to a virtual image has specific advantages, it would have been obvious to one of ordinary skill in the art to replace the mirror/windshield system of Jost that produces only a virtual image with one like that of Kleinschmidt that produces both virtual image and real image.

Also as outlined in the final rejection and in the examiner's answer, Kleinschmidt teaches all the claimed invention except for the projection being a front projection. As is well known in the art, front projection (the method utilized by Jost) is interchangeable with a rear projection. However, in the present case, official notice was not the sole source of the teaching, rather Jost specifically teaches that mounting the projector on the ceiling of the vehicle rather than in the dash board as in prior art (such as Kleinschmidt) has the advantage of allowing for space in the vehicle to be better utilized (column 1, lines 52-59). The fact that Kleinschmidt uses rear projection is irrelevant as Jost very clearly sets forth that it is advantageous to use front projection in a vehicle setting with a specific disposition on the ceiling of the vehicle.

Appellant argues that a mirror surface, as taught by Jost is not suitable for generating a real image (the assertion that it is not able is not acquiesced to by the examiner.)

It is irrelevant because Jost's mirror surface is not being used to generate the real image. Kleinschmidt provides the motivation to replace it with one that is. Kleinschmidt teaches the real image and the system to generate it. Appellant's assertion that nothing in the Kleinschmidt reference suggests the projection of a real image is incorrect since the discussion of the real image, in addition to a virtual image, and its advantages are recited in numerous places in the patent, particularly at the aforementioned places.

Appellant argues that the examiner's rejection is based on conclusory hindsight, reconstruction and speculation.

The examiner disagrees. The reasons to combine Jost and Kleinschmidt are derived from the references themselves. Particularly Kleinschmidt discusses the advantage of having a real image to be projected in addition to the virtual image, and Jost discussed the advantage of using a front projection. These reasons have been discussed in numerous places in the patents, particularly at the aforementioned places. Appellants appear to argue against the references individually. One cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

Appellant responds that this case should be remanded to the examiner so that appellant is given a full and fair opportunity to respond to the new references and definitions cited by the examiner.

Appellant is incorrect in their characterization of the Wikepedia and Hecht references. They were provided only to provide the Board the background information of how the two terms Real image and Virtual image are defined to one of ordinary skill in the art. They do not change the grounds of rejection and are not part thereof. Kleinschmidt alone teaches a display in a vehicle, which generates a real image on a surface, which is viewed as a real image by the occupant of said vehicle. Kleinschmidt further provides motivation to modify Jost to achieve such a real image. There is no need for appellant to respond to the Wikepedia and Hecht references as they only serve to provide definitions and laws of nature and do not modify the grounds of rejection.

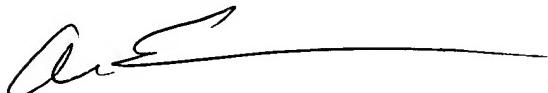
With respect to the additional question proposed as to whether a real image within the meaning of the claims is generated upon surfaces 1 or 11 of Jost and whether surfaces 1 or 11 of Jost can meet the recitation of a “display surface” in the claims,

The examiner responds that although a real image could possibly be produced on a surface of Jost; the consideration of this potential is irrelevant to the present issues as Jost only discloses a virtual image being made at a surface. Since as outlined in the final rejection and subsequent examiner's answers, Kleinschmidt clearly provides a teaching of a motivation for either using a surface of Jost that is capable of producing a real image as is to display a real image, or to modify Jost to have a surface that is capable produce a

real image as is taught by Kleinschmidt to display a real image. Accordingly there is no need to speculate as to whether Jost has an undisclosed surface that does/can produce a real image without modification.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,



Andrew Sever

Conferees:



Judy Nguyen

SPE

and

Arthur Grimley

Acting Director

